

| No. | ISSUE DESCRIPTION/ CURRENT DRAFT ORDINANCE | OPTIONS | STAFF COMMENTS | STAKEHOLDER COMMENTS |
|-----|---|--|--|----------------------|
| A. | MAP ISSUES | | | |
| 1. | <p>How should the Resource Protection Area (RPA) be mapped?</p> <p>The draft Chesapeake Bay Preservation Area Map (“the Map”) is general in nature and is not intended to depict the specific extent of the RPA. The Map is estimated to capture two-thirds of the perennial streams in the County, and does not depict any connected wetlands. The draft map lacks certainty due to the fact that additional areas of RPA could be identified by the site-specific delineation for projects that disturb 2,500 sf. There is concern regarding the added cost to the landowner to perform the site-specific RPA delineation.</p> <p>Current Draft Ordinance: Requires applicants to submit site-specific RPA delineations for land disturbance over 2,500 square feet (sf) to verify the location of perennial water bodies and connected wetlands. The RPA includes a 100-foot buffer measured 100 feet from the ordinary high water mark (e.g., stream bank) of each side of a perennial water body and from any connected wetlands. The Map is used for identifying the limits of the RPA for single-family detached dwellings and associated accessory structures and agricultural structures that disturb 2,500 sf or less of land without a site-specific RPA delineation.</p> | <p>1. Retain the current draft Ordinance/Map.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">• The draft map lacks certainty due to the fact that additional areas of RPA could be identified by the site-specific delineation for projects that disturb more than 2,500 sf.• Additional costs to applicants for projects that disturb more than 2,500 sf of land, particularly individual homeowners and farmers, for consultant fees to prepare the site-specific RPA delineations.• Ensures that all perennial streams and connected wetland are identified and protected for projects that disturb more than 2,500 sf of land. <p>2. Hire a consultant to identify all perennial streams in the County.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">• Identifies and protects the estimated one-third of the perennial streams that have not been identified and mapped.• Provides a cost reduction for applicants required to perform site-specific RPA delineation, due to the fact that only connected wetlands would need to be identified.• Involves a substantial fiscal impact – that in some cases would be unnecessary, as perennial streams would only need to mapped for projects that disturb more than 2,500 sf, based on the current draft Ordinance.• Cannot be implemented without permission from landowners to access properties to analyze streams.• Would not identify connected wetlands, resulting in the continued requirement for site-specific delineations for projects greater than 2,500 sf, as required by the current draft Ordinance. It would be cost-prohibitive for the County to map all connected wetlands. | <p>Staff can support Option #5 pending additional discussion with the stakeholders.</p> <p>Note: The Transportation/Land Use Committee will be reviewing information regarding the mapping of perennial streams.</p> | |

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| | | <p>3. Offer property owners the option of having County staff conduct the site-specific RPA delineations for single family detached dwellings, associated accessory structures, and agricultural structures.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">• Reduces or eliminates the cost of the RPA delineation for landowners.• Would likely require additional resources, to include a wetland specialist, which would have budget implications. <p>4. Map the RPA by using a minimum drainage area where the 100-foot RPA buffer would be required.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">• Eliminates uncertainty as to the presence of the 100-foot RPA Buffer.• There is no scientific data to support a connection between any particular size drainage area and the perenniality of a stream.• This would result in the RPA buffer being required adjacent to some intermittent streams and would exclude some perennial streams from being buffered.(Staff notes that the public hearing notice indicated that the proposed ordinance would relate to perennial water bodies, with no mention of intermittent streams.)• Connected wetlands would not be identified and protected.• Mapping drainage area to streams in Eastern Loudoun where piped drainage predominates would be difficult and may result in the need to require drainage area studies to be performed by applicants, reducing the level of desired certainty and increasing the cost to applicants. | | |

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| | | <p>5. Use the RPA as currently mapped and do not require additional RPA delineations.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> Eliminates uncertainty as to the presence of the 100-foot RPA Buffer. Eliminates costs associated with the site-specific RPA delineation. An estimated one-third of the perennial streams (and existing planted buffers) in the County would not be identified and would remain unprotected. Connected wetlands would not be identified and would remain unprotected. <p>6. Use the RPA as currently mapped and require additional RPA delineations for specified application types (e.g., ZMAP, SPEX, SBPL, CPAP, STPL, specified grading permits).</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> Eliminates uncertainty as to the presence of the 100-foot RPA Buffer for homeowners and farmers. Perennial streams and connected wetlands would be identified and protected in conjunction with the specified land development applications. | | |
| 2. | <p>Should the RPA be removed adjacent to wet ponds?</p> <p>Current Draft Ordinance: Removes the RPA only when adjacent to Stormwater Management Ponds that have been designed to provide water quality treatment consistent with guidance from the Department of Conservation and Recreation (DCR).</p> | <p>1. Retain current draft Ordinance.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> The RPA surrounding wet amenity ponds provides water quality treatment to sustain the physical integrity of the pond and aquatic life. This proposal is reflected in the September 21, 2010 Map. | Staff can support Option #3, pending additional discussion with the stakeholders. | |

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| | DCR has promulgated guidance clarifying that wet stormwater management facilities (lakes, ponds, and other impoundments) are exempt from classification as a water body with perennial flow, except in cases where the size of the facility exceeds stormwater management requirements. In the latter situation, the facility is considered to be an amenity and is treated as a water body with perennial flow (with an associated RPA) | <p>2. Remove the RPA adjacent to those wet ponds that are the subject of a stormwater maintenance agreement with the County pursuant to Chapter 1096 of the Codified Ordinances.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">Wet ponds subject to agreements are maintained by the County to ensure ongoing pollutant removal efficiency.This would reduce the number of wet ponds included in the RPA as originally proposed, but would increase the number of wet ponds included in the RPA as of September 21, 2010. <p>3. Remove the RPA adjacent to all wet ponds.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">Allows improvements to be constructed within the RPA, resulting in additional disturbances and water quality impacts. These ponds would be constructed in adherence to requirements (i.e. erosion and sediment control). | | |
| 3. | <p>Should the Resource Management Area (RMA) be eliminated?</p> <p>Current Draft Ordinance: Currently, the entire County (except Towns) that is outside of the RPA is mapped as RMA.</p> <p>The following requirements are applicable within the RMA:</p> <p>1) Requires pumping out traditional septic systems once every five years and/or documentation of inspection of alternative systems; and</p> <p>2) Grading permit (E&S controls) for projects</p> | <p>1. Retain the current draft Ordinance.</p> <p>2. Map the RMA only in areas that are known to have environmentally sensitive features (e.g., floodplains, highly erodible soils including steep slopes, highly permeable soils, nontidal wetlands not included in the RPA, and such other lands considered by the local government to be necessary to protect the quality of state waters).</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">The pump-out and grading permit would not be required on land outside the RMA.There is very little land area that would not be encompassed by the RMA when all environmentally sensitive features are mapped. | <p>Staff can support Option #1 or #3, pending additional discussion with the stakeholders.</p> <p>.</p> | |

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| | that exceed 2,500 sf of land disturbance (reduced from 5,000 sf for commercial, industrial, single family attached, and multifamily projects and 10,000 sf for other projects). | <ul style="list-style-type: none">There would be two standards; one for areas within the RMA and one for areas outside of the RMA, which would increase the complexity of the program for applicants and staff.The jurisdiction-wide RMA provides regional consistency with Prince William County and Fairfax County. <p>3. Eliminate the RMA and amend the land disturbance threshold in the Erosion Control Ordinance and require the five-year pump-out and or documentation of inspection of alternative systems in the Codified Ordinance.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">This option would require additional amendments to be drafted and processed in a case where the current amendments achieve the same goal. | | |
| 4. | <p>Should the Draft RPA Screening Tool be eliminated? (RMA/Possible RPA identified in yellow).</p> <p>A concern has been the expressed regarding the potential effect of the Screening Tool on property values and the ability to sell a property, as it identifies parcels that may contain RPA. There is also a concern that the total area depicted on the Screening Tool as “RMA/Possible RPA” may be designated as RPA in the future.</p> <p>Current Screening Tool: The current screening tool was proposed to be used by Staff to identify areas of the County where an RPA delineation would be required in conjunction with certain residential and agricultural grading permit applications. Under the Current Draft Ordinance, an RPA delineation would be required for grading permits for single family</p> | <p>1. Retain the current Screening Tool.</p> <p>2. Eliminate the Screening Tool.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">The elimination of the draft RPA Screening Tool Map would alleviate concerns regarding the potential negative implications on individual properties.This would eliminate the concern regarding the total area depicted on the Screening Tool being designated as RPA in the future.Property owners would not have a visual representation of where the Administrator could waive the RPA delineation as outlined in the Ordinance. | Staff supports Option #2, pending additional discussion with the stakeholders. | |

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| | <p>detached dwellings and associated accessory structures and agricultural structures proposing land disturbance greater than 2,500 sf, where any portion of the land disturbance is located within 200 feet of a stream or water body that has the potential to be perennial. The intent of the tool was to eliminate the need to perform an RPA delineation in conjunction with these residential and agricultural grading permit applications if all of the land disturbance would be located further than 200 feet from a surface drainage feature.</p> <p>Without the Screening Tool, the Administrator could still waive the RPA delineation for any project that disturbs more than 2,500 sf, where there are no streams or water bodies with the potential to be characterized as a water body with perennial flow, located within the limits of land disturbing activity, nor within 200 feet of the limits of land disturbing activity, as defined in Section 1222.08(a).</p> | | | |
| B. | ACCESSORY STRUCTURES | | | |
| 5. | <p>Should accessory residential structures be exempt from the CBPO requirements?</p> <p>Current Draft Ordinance: Approval from the Chesapeake Bay Review Board is required to locate a detached accessory structure of any size in the RPA. If located in the landward 50 feet of the RPA, a Minor Water Quality Impact Assessment (WQIA) is required. If located in the Seaward 50 feet of the RPA, a Major WQIA is required. Thus, the current Ordinance provides an incentive to locate the structure farther away from perennial water bodies.</p> | <p>1. Retain the current draft Ordinance.</p> <p>2. Exempt one residential accessory structure up to 150 square feet in size in the RPA per lot.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">This option would eliminate the costs associated with County review and approval of the referenced improvements.This option would not require a Water Quality Impact Assessment and the accompanying mitigation or approval of an RPA exception.This will result in an incremental decrease in water quality when | <p>Staff can support Option #3, pending additional discussion with the stakeholders.</p> | |

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| | | <p>compared to the current draft ordinance due to the removal of vegetation within the buffer and the establishment of impervious cover.</p> <ul style="list-style-type: none">Existing structures within the RPA would be grandfathered, but would be counted toward the 150 sf exemption.The option as proposed does not incentivize the location of the structure farther away from the perennial water body. <p>3. Exempt residential accessory structures in the RPA with a cumulative footprint and disturbance of up to 150 sf per lot inclusive of existing accessory structures in the RPA.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">Same considerations as Option 2.This option allows multiple accessory structures with a total cumulative footprint of 150 sf per lot. | | |
| 6. | <p>Should the construction of accessory structures and uses, such as parking areas, be approved by an administrative waiver?</p> <p>Current Draft Ordinance: Accessory structures are permitted in the RPA with the approval of an RPA exception approved by the Chesapeake Bay Review Board following public notice and public hearing.</p> | <p>1. Retain the current draft Ordinance.</p> <p>2. Allow for the stated uses to be approved by an administrative waiver.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">Accessory uses such as parking areas introduce additional types of pollution into the RPA, such as pollutants originating from vehicles. | <p>Staff can support Option 2, provided that specific performance standards are included (i.e. parking areas limited to a certain size).</p> | |
| 7. | <p>Should multiple accessory structures with a cumulative footprint up to 2,500 sf be approved by an administrative waiver, as opposed to an exception, similar to minor additions?</p> <p>Current Draft Ordinance: Construction of detached accessory structures in the RPA requires the approval of an exception by the</p> | <p>1. Retain the current draft Ordinance.</p> <p>2. Include accessory structures in the allowance for adding up to 2,500 square feet of impervious area to existing uses in the RPA [see Section 1222.20(a)(i)] by modifying Section 1222.20(c) so as to only require an RPA exception (versus an RPA waiver, which is administrative) for when the cumulative impervious area increases after the adoption date exceeds 2,500 square feet.</p> | <p>Staff can support Option 2, provided that specific performance standards are included.</p> | |

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| | Chesapeake Bay Review Board following public notice and a public hearing. | <p><u>Considerations:</u></p> <ul style="list-style-type: none">The proposed amendment to Section 1222.20(a)(i) could result in the disturbance of the entire landward 50-feet of the RPA buffer on smaller residential lots. Given that this may be the entire extent of the RPA on these lots, there will be limited opportunities to provide the requisite mitigation on the subject property.The proposed amendment to Section 1222.20(c) would contradict the corresponding amendment to Section 1222.20(a)(i) by allowing disturbances for accessory structures with a cumulative impervious area up to 2,500 square anywhere in the buffer, including the seaward 50-feet, by administrative waiver. | | |
| C. | E & S THRESHOLDS | | | |
| 8. | <p>Should the proposed land disturbance threshold that triggers the requirement for a grading permit (E&S control measures) be increased from the currently proposed 2,500 sf?</p> <p>A concern has been expressed that lowering the land disturbance threshold to 2,500 sf would result in an economic burden on the agricultural community and would have a negative impact on the rural economy.</p> <p>Current Draft Ordinance: The draft regulations propose to reduce the land disturbance threshold requiring a grading permit from 5,000 sf for commercial, industrial, single family attached, and multifamily projects; and 10,000 sf for all other projects, to 2,500 sf for all projects.</p> | <p>1. Retain the current draft Ordinance.</p> <p>2. Retain the existing 10,000 sf threshold for agricultural structures and retain the proposed 2,500 sf threshold for all other applicable land disturbing activities.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">Would reduce the cost to farmers to submit grading permit applications.Would result in a minimal reduction in the level of water quality protection compared to the current draft Ordinance due to the fact that E&S controls would not be implemented in conjunction with land disturbances greater than 2,500 sf, up to 10,000 sf. <p>3. Retain all existing land disturbance thresholds.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">This option would not afford any additional water quality protection beyond existing requirements. | Staff can support Option #2, pending additional discussion with the stakeholders. | |

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| D. | GRANDFATHERING | | | |
| 9. | <p>Should the grandfathering policy require previously approved projects to meet the CBA regulations to the “greatest extent possible” or the “extent practicable”?</p> <p>Current Draft Grandfathering Policy: The current Draft Grandfathering Policy requires pending plans to comply with the Ordinance to the “greatest extent possible” consistent with Opinions of the Attorney General and with Section 15.2-2261 of the Virginia Code, which states:</p> <p><i>“Nothing contained in this section shall be construed to affect ... (iii) the application to individual lots on recorded plats or parcels of land subject to final site plans, to the <u>greatest extent possible</u>, of the provisions of any local ordinance adopted pursuant to the Chesapeake Bay Preservation Act (§ <u>10.1-2100 et seq.</u>).”</i></p> | <p>1. Retain the current draft Grandfathering Policy.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">• The current grandfathering policy allows encroachments into the RPA buffer without the approval of an exception to reduce costs associated with complying with the requirements. <p>2. Amend the current draft Grandfathering Policy to read “extent practicable.”</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">• Would introduce cost as a factor in determining the level of required compliance.• Has the potential to reduce the water quality benefits obtained by implementation of the Ordinance.• The current grandfathering policy allows encroachments into the RPA buffer without the approval of an exception to reduce costs associated with complying with the requirements. <p>3. Amend the current draft Grandfathering Policy to read “extent possible.”</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">• This change offers a compromise solution consistent with the Fairfax County policy that does not reduce the water quality benefit obtained by implementation of the Ordinance. | <p>Staff can support Option #3, pending additional discussion with the stakeholders.</p> <p>.</p> | |

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| 10. | <p>Should Section 7(b) of the draft Grandfathering Policy be amended such that compliance with the regulations would not be required if it would result in the following:</p> <p>(iv) a change in housing type or significant change in lot size,</p> <p>(v) a change in the type of use (i.e., surface parking to structured, one-story building to multi-story), or</p> <p>(vi) a substantial modification to the land plan if said plan was proffered”?</p> <p>Current Draft Grandfathering Policy: The current Draft Grandfathering Policy requires an RPA delineation to be performed for pending plans and requires these plans to meet the Ordinance requirements to the greatest extent possible. The policy also allows pending plans to encroach into the RPA without the approval of an RPA exception.</p> | <p>1. Retain the current draft Grandfathering Policy.</p> <p>2. Amend the current draft Grandfathering Policy by adding 7.b.(iv) to provide that compliance would not be required if it would result in a change in housing type to include, but not limited to, changes in housing type from single family detached to multifamily.</p> <p>3. Amend the current draft Grandfathering Policy to provide that compliance would not be required if it would result in a significant change in lot size.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> This change would prevent consideration and discussion of a change from a traditional grid development to a cluster development as a potential approach, without loss of density, to avoid impacts to the RPA. <p>4. Amend the Current Draft Grandfathering Policy to provide that compliance would not be required if it would result in a change in the type of use (i.e., surface parking to structured, one-story building to multi-story.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> This change would preclude the consideration and discussion of vertical integration as a potential approach to avoid impacts to the RPA, which may be appropriate at certain densities in certain zoning districts. <p>5. Amend the Current Draft Grandfathering Policy to provide that compliance would not be required if it would result in a substantial modification to the land plan if said plan was proffered.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> This provision is already included in the Current Draft Grandfathering Policy as Item 7(a). | <p>Staff seeks additional discussion and clarification from the stakeholders.</p> | |

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| E. | DEFINITIONS (CBPO Section 1222.05) | | | |
| 11. | <p>Should the definition of “Best Management Practices” be revised as follows: “...a practice or combination of practices that are the most an effective, practicable means of preventing or reducing the amount of pollution generated by non-point sources (NPS) to a level compatible with established water quality goals?”</p> <p>Current Draft Ordinance: The draft ordinance includes an amended definition recommended by the Planning Commission Subcommittee and the Planning Commission:</p> <p><i>“Best Management Practice” or “BMP” means a practice or combination of practices that are the most effective, and practical practicable means of preventing or reducing the amount of pollution generated by non-point sources (NPS) to a level compatible with established water quality goals.</i></p> | <p>1. Retain the current draft Ordinance.</p> <p>2. Change the definition as proposed.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> The language is not consistent with the agricultural BMP requirements outlined in Section 1222.15, which require the BMP that addresses the <u>more</u> predominant water quality issue, as opposed to <u>a</u> predominant water quality issue. “Most effective” is consistent with the BMP definition in the Revised 1993 Zoning Ordinance. | <p>Staff can support Option #2, pending additional discussion with the stakeholders.</p> | |
| 12. | <p>Should the definition of “Plan of Development” be revised to exclude Concept Development Plans and Preliminary Subdivisions, with the intent of not requiring site specific RPA delineations for such applications?</p> <p>Current Draft Ordinance: Concept Development Plans and Preliminary Subdivision Plats are included in the definition of Plan of Development.</p> | <p>1. Retain the current draft Ordinance.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> Identifying the RPA at the time of rezoning, special exception, and preliminary plat ensures full compliance with the ordinance. <p>2. Change the definition as proposed.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> The RPA delineation is necessary at the time of rezoning, special exception, and preliminary plat to determine the extent of the RPA and to identify whether or not an exception is needed. Not requiring this information would result in reduced water quality protection and the potential for substantial conformance issues later in the development | <p>Staff supports Option #1, pending additional discussion with the stakeholders.</p> <p>It is noted that this issue is contingent on the option selected for Issue #1 regarding the mapping of the RPA.</p> | |

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| | | <p>process, which add delay and cost for the applicant, the Board, and staff</p> <ul style="list-style-type: none">This option results in the potential for the specified land development applications to depict encroachments into the RPA that would subsequently be grandfathered. | | |
| 13. | <p>Should the definition of “Redevelopment” be revised?</p> <p>Current Draft Ordinance: The draft ordinance includes an amended definition recommended by the Planning Commission:</p> <p><i>“Redevelopment” means the process of developing land in the same physical location, that is or has been previously developed, where there is no increase in the amount of impervious cover and no further encroachment into the Resource Protection Area.</i></p> <p>Section 1222.12(b) states:</p> <p>Redevelopment, provided that: there is no increase in the amount of impervious cover, it is in the same physical location, there is no further encroachment into the RPA, and it conforms with the Erosion and Sediment Control and Stormwater Management Requirements outlined in Section 1222.17.</p> <p>The <u>Revised General Plan</u> defines redevelopment as "A change in land use which would involve the removal and replacement, rehabilitation, or adaptive reuse of an existing structure or structures, or of land from which previous improvements have been removed.</p> | <p>1. Retain the current draft Definition.</p> <p>2. Revise as follows: <u>"Redevelopment" means the substantial alteration, rehabilitation, or rebuilding of a property for residential, commercial, industrial, or other purposes where there is no net increase in impervious area by the proposed redevelopment within an RPA and no more than a net increase in impervious area within an RMA of 20% relative to conditions prior to redevelopment, or any construction, rehabilitation, rebuilding, or substantial alteration of residential, commercial, industrial, institutional, recreational, transportation, or utility uses, facilities or structures within an IDA.</u></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">There are no prohibitions on redevelopment within the RMA, thus there is no need to provide language relative to redevelopment within the RMA. | <p>Staff seeks additional clarification from the stakeholders regarding the suggested amendment in Option 2.</p> | |

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| | Redevelopment should be compatible with adjacent properties and occur with input and involvement from the community." | | | |
| F. | EXEMPT USES (CBPO Section 1222.11) | | | |
| 14. | <p>Should “private roads” and “private driveways” be added to the list of exempt uses?</p> <p>Current Draft Ordinance: Private roads and driveways are listed as permitted uses in Section 1222.C provided that:</p> <p>i. The Administrator makes a finding that there are no reasonable alternatives to aligning the private road or driveway in or across the RPA;</p> <p>ii. The alignment and design of the private road or driveway are optimized, consistent with other applicable requirements, to minimize encroachment in the RPA and to minimize adverse effects on water quality; and</p> <p>iii. The design and construction of the private road or driveway satisfy all applicable Performance Criteria (Section 1222.17) and County Codes.</p> <p>A Water Quality Impact Assessment and accompanying mitigation are required for permitted uses.</p> | <p>1. Retain the current draft Ordinance.</p> <p>2. Include private roads and private driveways with public roads as exempt uses under Section 1222.11(d).</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">Exempting private roads and driveways would eliminate the need for a Water Quality Impact Assessment and accompanying mitigation.While the optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize encroachment in the RPA and minimize adverse effects on water quality would be required, private roads and private driveways would not require a finding that there is no reasonable alternative to aligning the private road or driveway in or across the RPA, resulting in additional disturbances within the RPA that could have otherwise have been avoided. | <p>Staff seeks further discussion with the stakeholders.</p> | |
| 15. | <p>Should “the construction, installation, operation, and maintenance of wetland restoration, wetland mitigation, stream restoration, and stream stabilization” be added to the list of exempt uses?</p> | <p>1. Retain the current draft Ordinance.</p> <p>2. Include stream and wetland restoration and mitigation projects approved by the Virginia Department of Environmental Quality, the Virginia Marine Resources Commission, and/or the U.S. Army Corps of Engineers as exempt uses under Section 1222.11.</p> | <p>Staff seeks further discussion with the stakeholders.</p> | |

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| | <p>Current Draft Ordinance: Stream and wetland restoration and mitigation projects approved by the Virginia Department of Environmental Quality, the Virginia Marine Resources Commission, and/or the U.S. Army Corps of Engineers are included in the definition of “water-dependent facility,” which is identified as a permitted use under Section 1222.12(a) provided that:</p> <p>i. It does not conflict with the Zoning Ordinance;</p> <p>ii. It complies with the Performance Criteria outlined in Section 1222.17;</p> <p>iii. Any non water-dependent component is located outside of the RPA; and</p> <p>iv. Access to the water dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided.</p> <p>A Water Quality Impact Assessment and accompanying mitigation are required for permitted uses.</p> | <p><u>Considerations:</u></p> <ul style="list-style-type: none">Exempting mitigation projects would eliminate the need for a Water Quality Impact Assessment and accompanying mitigation.The exemption would not require conformance with local erosion and sediment control requirements (wetland mitigation projects can currently opt out of local review following the approval of annual erosion control specifications by the Virginia Department of Conservation and Recreation), would not require non water-dependent facilities to be located outside the RPA, and would not require that access to the facility minimize disturbance to the RPA, resulting in additional disturbances within the RPA that could have otherwise have been avoided. | | |
| 16. | <p>Should the following be added to the list of exempt uses in paragraph (e): the construction, installation, operation and maintenance of <u>connections to water wells and septic fields, sanitary sewer laterals and storm drains and storm sewers and their outfall structures</u>?</p> <p>Current Draft Ordinance: Wells (and associated connections) are currently exempt in the RPA. Outfall structures of storm drains and</p> | <p>1. Retain the Current Draft Ordinance.</p> <p>2. Include septic field connections and storm drains and storm sewers and their outfall structures as exempt uses under Section 1222.11.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">Exempting septic field connections and storm drains and storm sewers and their outfall structures would eliminate the need for a Water Quality Impact Assessment and accompanying mitigation. | <p>Staff seeks further discussion with the stakeholders.</p> | |

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| | <p>sewers are included under the definition of “water-dependent facility,” which is a permitted use in the RPA. Septic fields and septic laterals are only permitted in the RPA in conjunction with administrative waivers for the loss of a buildable area or by exception. The construction of sanitary sewer lines and laterals is exempt.</p> <p>A Water Quality Impact Assessment and accompanying mitigation are required for permitted uses.</p> | <ul style="list-style-type: none">The exemption will result in additional disturbances within the RPA that could have otherwise have been avoided and eliminate the mitigation requirement. | | |
| G. BUFFER AREA REQUIREMENTS (CBPO Section 1222.14) | | | | |
| 17. | <p>Should Section 1222.14 (e) be removed, which requires that the full width of the Buffer Area be planted when and where an agriculture or silviculture use within the Buffer Area ceases and the lands are proposed to be converted to other uses be removed? Is the maintenance of existing ground cover sufficient?</p> <p>Current Draft Ordinance: Section 1222.14(e) requires the full width of the buffer area to be planted when and where an agriculture or silviculture use within the Buffer Area ceases and the lands are proposed to be converted to other uses.</p> | <p>1. Retain the current draft Ordinance.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">The referenced section requires areas of the buffer that have been previously deforested by agricultural or silvicultural activities to be replanted at the time of development. The reforestation restores the function of the buffer prior to the development of the property. <p>2. Remove Section 1222.12 (e).</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">Removal of this requirement would significantly reduce the potential water quality improvement associated with the draft amendments and would result in the only required buffer planting to be associated with mitigation required in conjunction with permitted uses, administrative waivers, and exceptions for proposed disturbances within the RPA. | <p>Staff seeks further discussion and clarification with the stakeholders.</p> | |

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| H. | MINIMUM LOT SIZE (CBPO SECTION 1222.16) | | | |
| 18. | <p>Should the minimum distance between the RPA and the principal structure be reduced?</p> <p>It may be difficult to determine which yard (front, side, rear) would apply for odd shape lots.</p> <p>Current Draft Ordinance: The minimum distance between the RPA and the principal structure on new residential lots shall be equal to the minimum corresponding required yard (front, side and rear) of the applicable zoning district to ensure useable lot area is maintained.</p> | <p>1. Retain the current distance to equal the minimum corresponding required yard (front, side and rear) of the applicable zoning district.</p> <p>2. Reduce the distance to 10 feet.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">Reduction in the setback increases the potential for minor additions to encroach into the RPA, resulting in additional disturbances to the RPA. | <p>Staff can support a fixed setback of a certain dimension, pending additional discussion with the stakeholders.</p> | |
| I. | PERFORMANCE CRITERIA (CBPO 1222.17) | | | |
| 19. | <p>Should the Ordinance include the optional provision to allow a plastic filter to be installed and maintained in the outflow pipe from the septic tank to filter solid material from the effluent while sustaining adequate flow to the drainfield as an alternative to the mandatory pump-out?</p> | <p>1. Retain the current draft Ordinance.</p> <p>2. Incorporate the plastic filter alternative to the mandatory pump-out.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">The Health Department has indicated that the plastic filter option is not recommended due to the fact that these devices tend to clog and are often removed, rather than replaced, once they stop functioning. | <p>Staff supports Option #1, pending additional discussion with the stakeholders</p> | |
| 20. | <p>Should 1) the mandatory septic pump-out time frame be extended from five-years to a longer period of time, and/or 2) documentation that the system has been inspected and does not need to be pumped out, be added to reduce the financial burden of pumping systems that are not operating at full capacity (e.g., due to reduced occupancy)?</p> <p>Current Draft Ordinance: The current draft ordinance requires conventional septic systems to be pumped out once every five years and</p> | <p>1. Retain the current draft Ordinance.</p> <p>2. Amend the Ordinance to revise the pump-out time frame.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">The Health Department recommends that septic systems be maintained every 3-5 years.Improper maintenance can result in system failure and water quality pollution. | <p>Staff supports Option #1, pending additional discussion with the stakeholders.</p> | |

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| | alternative septic systems to be pumped or inspected. | <p>3. Amend the Ordinance to allow the option for inspection of conventional septic systems similar to alternative septic systems.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">• The Health Department has indicated that the pump-out does not cost appreciably more than the inspection, minimizing the advantage of only performing an inspection.• This option results in the potential for an inspection that identifies a system near capacity, for which documentation of the pump-out would not be required for the next five years.• Improper maintenance can result in system failure and water quality pollution. | | |
| J. | WATER QUALITY IMPACT ASSESSMENT (CBPO 1222.18) | | | |
| 21. | <p>Should the Water Quality Impact Assessment (WQIA) be modified so that a Major WQIA is not required for encroachments into the seaward 50 feet of the Buffer Area associated with smaller structures?</p> <p>Current Draft Ordinance: The current draft ordinance requires a Major WQIA for disturbances in the seaward 50-feet of the RPA, which requires studies and plans from a consultant and engineer.</p> <p>The requirements have been structured such that an additional level of detail would be required for improvements proposed within the seaward 50-feet in order to pinpoint the limits of land disturbing activity in relation to the location of perennial water bodies, connected wetlands, and the 100-foot buffer.</p> <p>The current structure provides an incentive to</p> | <p>1. Retain the current draft Ordinance.</p> <p>2. Amend the WQIA requirements for smaller structures.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">• Item #5 addresses exemptions of structures in the RPA up to a cumulative total of 150 sf. A WQIA is not required for exempt uses.• This would remove the incentive to locate small structures outside of the seaward 50-feet of the buffer. | Staff seeks further discussion and clarification with the stakeholders. | |

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| | locate structures outside of the seaward 50-feet of the 100-foot buffer adjacent to perennial streams and water bodies consistent with the purpose of the ordinance. | | | |
| K. | ADMINISTRATIVE WAIVER FOR LOSS OF BUILDABLE AREA (CBPO 1222.19) | | | |
| 22. | <p>Should the phrase “Buffer Area” be replaced with “RPA”?</p> <p>Current Draft Ordinance: Section 1222.19 allows encroachment into the 100-foot Buffer Area, but not into the RPA itself, which includes connected wetlands.</p> <p>The waiver requires that encroachments into the Buffer Area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.</p> | <p>1. Retain the current draft Ordinance.</p> <p>2. Amend Section 1222.19 to replace “Buffer Area” with “RPA.”</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">Allows potential impacts to connected wetlands that would otherwise be protected by the application of the RPA requirements. | Staff requests additional discussion with the stakeholders. | |
| 23. | <p>Should the requirement for a Water Quality Impact Assessment be eliminated in Section 1222.19(a)vi to reduce costs to homeowners?</p> <p>Current Draft Ordinance: Section 1222.19(a)vi. requires a Water Quality Impact Assessment to be submitted in conjunction with the waiver request.</p> <p>As currently drafted, disturbances less than 2,500 square feet in the landward 50-feet of the RPA requires a Minor Water Quality Impact Assessment that can be prepared by the applicant without assistance from a consultant or engineer and staff can perform the RPA delineation.</p> | <p>1. Retain the Current Draft Ordinance.</p> <p>2. Delete Section 1222.19(a)vi.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">Eliminating the Water Quality Impact Assessment would eliminate the requirement for an RPA delineation to be performed for disturbances less than 2,500 square feet in the RPA.Eliminating the Water Quality Impact Assessment would remove the requirement to analyze water quality impacts and to mitigate proposed disturbances in the RPA beyond establishing a vegetated buffer equal to the area of encroachment on the lot or parcel. | Staff requests additional discussion with the stakeholders. | |

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| L. | ADMINISTRATIVE WAIVER OF PERFORMANCE CRITERIA (CBPO SECTION 1222.21) | | | |
| 24. | <p>Should Section 1222.21 be amended as follows: The Administrator may shall waive the Performance Criteria . . .</p> <p>There concern is that there is an overly broad discretion vested in the Administrator when the criteria specified have been met.</p> | <p>1. Retain the current draft Ordinance.</p> <p>2. Amend Section 1222.21 as suggested.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> The Administrator may still deny the request. | Staff supports Option #2, pending additional discussion with the stakeholders. | |
| M. | AGRICULTURE | | | |
| 25. | <p>Should the County actively fund programs to protect streams and wetlands in agricultural areas (current Federal and State funding is not enough) to:</p> <ol style="list-style-type: none"> Fence out cattle from streams, springs, and wetlands with ideally 100 feet or more buffers and purchase perpetual easements on such areas; Install water systems for cattle in conjunction with such fencing; and Reforest these buffers with native herbaceous, shrubs and trees. <p>Current Draft Ordinance: Agricultural requirements are outlined in Section 1222.15. Installation of cropland Best Management Practices (BMPs) is required to offset 50-foot and 75-foot cropland encroachments into the 100-foot buffer. Grazing land BMPs (e.g., livestock fencing) would only be required where permanent vegetative cover cannot be maintained.</p> | <p>1. Retain the current draft Ordinance.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> Existing cost-share funding could be prioritized to assist with the implementation of the Ordinance. <p>2. Pursue funding options for fencing livestock out of streams, installing alternative watering systems, and reforesting agricultural buffers.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> The Transportation Land Use Committee (TLUC) initiated discussion of riparian buffer incentives during the October 20, 2010 TLUC meeting. The Action Item for the October 20, 2010 TLUC meeting summarized existing and potential incentives to support implementation of the Ordinance requirements and to encourage implementation above and beyond the Ordinance requirements. | The Transportation and Land Use Committee is currently exploring incentives for establishing and retaining riparian buffers, which includes the possible funding of various programs. | |

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| N. | APPEALS (CBPO SECTION 1222.24) | | | |
| 26. | <p>Should appeals of administrative decisions be processed by the Board of Supervisors, rather than the Chesapeake Bay Review Board (CBRB)?</p> <p>Current Draft Ordinance: Section 1222.24 is structured such that appeals of administrative decisions are reviewed by the CBRB.</p> <p>The issue is whether these decisions should be forwarded directly to the elected officials, who are accountable to the public, which will reduce time and court costs.</p> | <p>1. Retain the current draft Ordinance.</p> <p>2. Amend Section 1222.24 as suggested.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">The members of the CBRB are required to have demonstrated knowledge of and interest in environmental issues and represent diverse professions related to agriculture, land development, and the environment and are appointed by the Board of Supervisors. | <p>Staff supports Option #1, pending additional discussion with the stakeholders.</p> | |
| O. | INTENSELY DEVELOPED AREAS (IDAs) | | | |
| 27. | <p>Should buffer encroachments be authorized in the Route 28 Tax District and other designated areas targeted for economic development? Should these areas be designated IDAs?</p> <p>Current Draft Ordinance: There are no buffer encroachments presently authorized within these areas. Encroachments into the buffer that are not otherwise permitted or exempt would require the approval of an administrative waiver or RPA exception. The Ordinance outlines the process for applying for an RPA exception, which requires the submission and review of a Water Quality Impact Assessment analyzing the water quality impacts of the proposed disturbance in the RPA and accompanying mitigation, to address proposed buffer reductions. Density credit is provided for land within the RPA, as well as the Major Floodplain.</p> <p>The Route 28 Tax District was deemed not to</p> | <p>1. Retain the current draft Ordinance.</p> <p>2. Authorize buffer encroachments for development within the Route 28 Tax District and other designated areas targeted for economic development.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">Would reduce costs associated with land development applications and maximize developable land area.Additional costs would be associated with the requirement to identify perennial streams and the boundary of the RPA in addition to existing wetland delineation requirements and to obtain a waiver or RPA exception for disturbances in the RPA that are not otherwise exempt or permitted.Significant areas of natural environment remain within the Route 28 Tax District, with 31 percent of the area being impervious based upon current Geographic Information System data.Approximately 8 percent of parcels within the Route 28 Tax District contain RPA, compared to 10 percent Countywide. | <p>Staff recommends that the potential impacts of the regulations on the Route 28 Tax District and other areas targeted for economic development be evaluated following the stakeholder recommendations for addressing the other issues in the matrix.</p> | |

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| | meet the regulatory requirements to be designated as an Intensely Developed Area (IDA), which would allow reduction of the buffer. The IDA is intended to apply in cases where development has severely altered the natural state of the area such that at least one of the following conditions exist at the time of adoption: 1) there is more than 50 percent impervious surface; 2) public sewer and water systems or a constructed stormwater drainage, or both have been constructed (not planned) as of the local adoption date; or 3) housing density is equal to or greater than four dwelling units per acre. | <ul style="list-style-type: none"> Approximately 58 percent of the RPA within the Route 28 Tax District falls within the Major Floodplain, where development is already limited by the Zoning Ordinance regulations of the Floodplain Overlay District. The addition of authorized buffer encroachments has the potential to significantly reduce the water quality protection afforded by the draft Ordinance, resulting in additional disturbances within the RPA that could have otherwise have been avoided. The water quality impacts associated with a reduction of the buffer or the authorization of additional buffer encroachments without the review and approval of a waiver or exception would be significant due to the absence of mitigation to offset these impacts. | | |
| P. | EROSION CONTROL ORDINANCE | | | |
| 28. | <p>Should the existing language in Chapter 1220, the Loudoun County Erosion Control Ordinance, allowing Agreements in Lieu of a Plan to be submitted for grading permit applications for single-family detached homes, rather than an erosion and sediment control plan be retained?</p> <p>Current Draft Ordinance: The Agreement in Lieu of a Plan was removed due to the difficulty with enforcing the Agreements and the need to require a plan of development for all projects that disturb more than 2,500 square feet to facilitate the analysis of whether or not an RPA delineation would be required and to implement the buffer requirements.</p> | <p>1. Retain the current draft Ordinance.</p> <p>2. Maintain the reference to Agreement in Lieu of a Plan in Chapter 1220.05 (a), 1222.05(x), and 1220.06(c) as suggested.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> The Agreement in Lieu of a Plan does not specify the specific location of the proposed improvements, the approved limits of disturbance, or the specific location of required erosion and sediment controls, which complicates implementation of the required measures by the applicant and enforcement by the County. There would be no plan on which to depict the RPA delineation. | <p>It is noted that this issue is contingent on the option selected for Issue #1 regarding the mapping of the RPA.</p> <p>If RPA delineations are not to be required in conjunction with grading permits for single-family homes, Staff can support maintaining the Agreement in Lieu of a Plan.</p> | |
| 29. | Should the E&S exemption for “septic tanks lines and drainage fields unless included in an overall plan for land disturbing activity relating to construction of the building to be served by the septic tank system” be retained to minimize | <p>1. Retain the current draft Ordinance.</p> <p>2. Maintain the referenced exemption.</p> <p><u>Considerations:</u></p> | Staff supports Option #2, pending additional discussion with the stakeholders. | |

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| | costs for drainfield repair and replacement? Current Draft Ordinance: The current ordinance removes the exemption consistent with the Bay Act regulations. | <ul style="list-style-type: none">The cost of the grading permit may be a disincentive to repairing malfunctioning systems which are detrimental to water quality. | | |
| Q. | FACILITIES STANDARDS MANUAL (FSM) | | | |
| 30. | Can a property owner or applicant submit an RPA delineation for approval separate of a plan of development? Current Draft FSM: While the current draft FSM does not preclude the submission of an RPA delineation application independent of a plan of development, it does not specify the accompanying application standards. | <ol style="list-style-type: none">Retain the current draft FSM.Clarify that RPA delineations can be submitted separate from a plan of development and draft standards for the submission and review of an RPA delineation application. | Staff supports Option #2, pending additional discussion with the stakeholders. It is noted that this issue is contingent on the option selected for Issue #1 regarding the mapping of the RPA. | |
| 31. | Should the following Sections of the FSM be amended to not require the location of the Ordinary High Water Mark (OHWM) of perennial water bodies, connected wetlands, where applicable, and the Buffer Area to be shown on the development plan, but rather just the approved RPA line?: 8.102.A.41 8.103.A.40 8.103.8.A.15 8.106.A.41 8.109.B.4 8.111.8 The issue is whether or not details associated with an application for RPA approval need to also be shown on subsequent plan applications due to the fact that it is redundant, expensive, and unnecessary to show this data multiple times. Showing only the approve RPA line should be all that is necessary. | <ol style="list-style-type: none">Retain the current draft FSM.Modify the requirements to depict only the RPA line on the plan of development in the referenced FSM sections. <p><u>Considerations:</u></p> <ul style="list-style-type: none">The proposed amendment would result in the inability of Staff to verify that the “RPA line” is depicted correctly (e.g., 100-feet from the ordinary high water mark of the perennial stream and/or connected wetlands) on subsequent plans.These features are necessary to evaluate the conditions associated with exempt and permitted uses, the Water Quality Impact Assessment, mitigation options, and associated RPA exceptions.The proposed amendment would result in a lack of disclosure to property owners regarding the presence of these features on recorded lots, which could increase potential RPA violations. | Staff seeks additional discussion and clarification with the stakeholders. | |